COMMONWEALTH OF PENNSYLVANIA
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

DEPARTMENT OF EDUCATION,	:	
Petitioner,	:	
	:	
	:	
v.	:	**DOCKET NO. DI-14-50**
	:	
JASON B. NOLAN,	:	
Respondent.	:	

MEMORANDUM AND ORDER

This matter is before the Professional Standards and Practices Commission ("Commission") upon the Department of Education's ("Department") Motion for Summary Judgment, which seeks the revocation of Respondent's educator certification and employment eligibility.[1] Initially, the Department filed a Notice of Charges against Respondent on August 11, 2014, alleging that Respondent had been convicted of Possession of Material Depicting the Sexual Exploitation of a Minor pursuant to 18 U.S.C. § 2252(a)(4)(B). In its Motion for Summary Judgment, filed simultaneously with the Notice of Charges, the Department requests that the Commission revoke Respondent's Pennsylvania professional educator certification pursuant to section 2070.9b(a)(2) of the Educator Discipline Act, 24 P.S. § 2070.9b(a)(2).

Section 9b(a)(2) of the Educator Discipline Act requires the Commission to direct the Department to revoke the certification and employment eligibility of an educator convicted of a crime involving moral turpitude or a crime listed in sections 111(e)(1) through (3) of the Public School Code of 1949 (24 P.S. § 1-111(e)) upon the filing of a certified copy of the verdict, judgment or sentence of the court with the Commission.

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1 Respondent holds an Instructional II Pennsylvania teaching certificate in the area of Social Studies.

Section 111(e)(3) includes crimes from another jurisdiction that are similar in nature to the Pennsylvania crimes listed in sections 111(e)(1) and (2). 24 P.S. § 2070.9b(a)(2); 24 P.S. § 1-111(e)(3).

In support of its Motion, the Department attached certified copies of the pertinent court documents reflecting Respondent's conviction. Respondent, having been served with the Notice of Charges and the Motion for Summary Judgment, failed to respond to either pleading. Accordingly, the facts alleged in the Notice of Charges are deemed admitted. 22 Pa. Code § 233.115(c)(1); 1 Pa. Code § 35.37.

In the instant case, there is no dispute that Respondent was convicted of the federal crime of Possession of Material Depicting the Sexual Exploitation of a Minor. Thus, the only question before the Commission is whether this crime involves moral turpitude or is similar in nature to the crimes listed in sections 111(e)(1) and (2) of the Public School Code of 1949.

In construing the word "similar" in the context of comparing two laws, the laws need not be identical to be similar; it is sufficient that the laws be nearly corresponding or have a general likeness. Com. v. Simpson, 294 A.2d 805 (Pa. Super. 1972). Applying this definition of similar to the case at hand, the Commission agrees with the Department that the federal crime of Possession of Material Depicting the Sexual Exploitation of a Minor is similar in nature to the Pennsylvania crime of Sexual Abuse of Children-Child Pornography (18 Pa. C.S. § 6312(d)), which is a crime enumerated in section 111(e)(1) of the Public School Code of 1949. A person commits the federal crime of Possession of Material Depicting the Sexual Exploitation of a Minor if he:

> knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction…if – (i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and (ii) such visual depiction is of such conduct…

18 U.S.C. § 2252(a)(4)(B). For the purposes of this offense, the term sexually explicit conduct includes any actual or simulated sexual intercourse, bestiality, masturbation, sadistic or masochistic abuse, or lascivious exhibition of the genitals or pubic area of any person. 18 U.S.C. § 2256(2)(A). Similarly, the Pennsylvania crime of Sexual Abuse of Children-Child Pornography is defined as follows:

> (d) Child Pornography.--Any person who intentionally views or knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging a prohibited sexual act or in the simulation of such act commits an offense.

18 Pa.C.S. § 6312(d). The term "prohibited sexual act" includes sexual intercourse, masturbation, sadism, masochism, bestiality, fellatio, cunnilingus, lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction. 18 Pa. C.S. § 6312(g).

The federal crime of Possession of Material Depicting the Sexual Exploitation of a Minor and Pennsylvania's crime of Sexual Abuse of Children-Child Pornography both proscribe the intentional possession or viewing of materials containing visual depictions of minors engaged in sex acts. Under these circumstances the Commission has no difficulty in concluding that Respondent's offense is similar in nature to the Pennsylvania crime of Sexual Abuse of Children-Child Pornography.

The determination of whether a crime involves moral turpitude is based solely upon the elements of the crime. The facts underlying the charges are not relevant to the issue of moral turpitude. 22 Pa. Code § 237.9(b); Startzel v. Commonwealth, Department of Education, 128 Pa. Commonwealth Ct. 110, 114, 652 A.2d 1005, 1007 (1989). Crimes from another jurisdiction that are similar in nature to the Pennsylvania crimes listed in sections 111(e)(1) and (2) of the Public School Code of 1949 are *per se* crimes involving moral turpitude. 22 Pa. Code § 237.9(c). Having already concluded that the crime of which Respondent has been convicted is similar in nature to a crime enumerated in section 111(e)(1), the Commission also concludes that Respondent's offense involves moral turpitude.

In light of the Commission's determination that Respondent has been convicted of a section 111(e)(3) crime and a crime involving moral turpitude, there is no genuine issue as to any material fact and the Department is entitled to judgment in its favor as a matter of law as the Educator Discipline Act mandates revocation. 24 P.S. § 2070.9b(a)(2).

The Department also requests that the Commission enter a finding that Respondent is guilty of sexual abuse or exploitation. The import of a finding of sexual abuse or exploitation is that the Commission is permanently barred from reinstating Respondent's certification and employment eligibility. 24 P.S. § 2070.16. Pursuant to section 2070.1b of the Educator Discipline Act, sexual abuse or exploitation shall have the meaning given to the term by 23 Pa.C.S. Ch. 63 (relating to child protective services), which includes the following: "the employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in

sexually explicit conduct." 24 P.S. § 2070.1b; 23 Pa.C.S. § 6303. In the instant matter, Respondent's conviction arose out of allegations that he knowingly possessed photographs of children engaged in sexually explicit conduct. There can be no question that the possession of images depicting children engaged in sexually explicit conduct for the purposes of arousing sexual desire and satisfying one's prurient interests constitutes the "use of a child to assist another individual to engage in sexually explicit conduct." Accordingly, the Commission finds that Respondent is guilty of sexual abuse or exploitation.

Finally, the Department also requests that the Commission enter a finding that immediate discipline is necessary to protect the health, safety or welfare of students or other persons in the schools of this Commonwealth. The import of this finding is that in the event an appeal is filed from the Commission's adjudication imposing discipline, the finding prevents the appeal from acting as a stay of the discipline. Thus, in those cases where the Commission finds that the danger presented by an educator's conduct outweighs the educator's interest in deferring discipline until an appellate court reviews the Commission's decision, it will enter the requested finding.

In this case, Respondent's knowing possession of photographs depicting children engaged in sexually explicit conduct clearly supports a finding that he poses a danger to the health, safety and welfare of students. Accordingly, the Commission finds that immediate discipline is necessary.

ORDER

AND NOW, this 10th day of October, 2014, upon consideration of the Motion for Summary Judgment filed by the Department of Education, it is hereby ORDERED that the educator certification and eligibility to be employed as a charter or cyber charter school staff member or a contracted educational provider staff member of Respondent JASON B. NOLAN shall be REVOKED IMMEDIATELY by the Department. The Commission further finds that the Respondent's conduct constitutes sexual abuse or exploitation under 24 P.S. § 2070.1b and 23 Pa. C.S. § 6303.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

BY: _____
Gilbert R. Griffiths
Chairperson

ATTEST: _____
Carolyn Angelo
Executive Director

Date Mailed: October 10, 2014